

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DONALD GREEN,

Petitioner,

vs.

THE STATE OF CALIFORNIA BOARD OF
PAROLE HEARINGS; MATTHEW CATE,

Respondents.

CASE NO. 10-CV-2516 JLS (JMA)

**ORDER: SUA SPONTE
(1) VACATING ORDER
ADOPTING REPORT AND
RECOMMENDATION;
(2) VACATING JUDGMENT; AND
(3) EXTENDING TIME TO REPLY
TO OBJECTIONS**

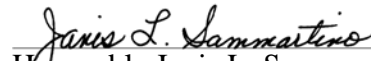
On July 25, 2011, Magistrate Judge Jan M. Adler filed a report and recommendation advising this Court to grant Respondent Matthew Cate's motion to dismiss and dismiss Petitioner's habeas corpus petition without prejudice to Petitioner bringing his claim under 42 U.S.C. § 1983. (ECF No. 16.) Magistrate Judge Adler ordered the parties to file any objections to the R&R "not later than August 16, 2011." (*Id.* at 6.) On August 29, 2011, having received no objections, the Court adopted Magistrate Judge Adler's R&R, granted Respondent's motion to dismiss, and dismissed Petitioner's habeas petition without prejudice to Petitioner bringing his claim under 42 U.S.C. § 1983. (ECF No. 18.) Subsequent to the issuance of that Order, the Court received Petitioner's objections to the R&R. (ECF No. 21.) Under the prisoner mailbox rule, *see Miles v. Prunty*, 187 F.3d 1104, 1106 n.2 (9th Cir. 1999), the objections are timely (*see* ECF No. 21, at 4 (objections mailed on August 16, 2011)). Accordingly, the Court accepted them *nunc pro tunc* to August 22, 2011. (ECF Nos. 20, 21.)

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1 Having accepted Petitioner's timely objections, the Court **HEREBY VACATES** (1) its August
2 29, 2011 Order adopting Magistrate Judge Adler's R&R, granting Respondent's motion to dismiss,
3 and dismissing Petitioner's habeas petition (ECF No. 18); and (2) the associated judgment (ECF No.
4 19). Respondent may reply to Petitioner's objections within ten days from the date that this Order is
5 electronically docketed.

6 **IT IS SO ORDERED.**

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8 DATED: September 2, 2011

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10 Honorable Janis L. Sammartino
11 United States District Judge
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